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November 8, 2000

via Hand Delivery

Federal Communications Commission  
Office of the Commission's Secretary  
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Washington, DC 20005

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FEDERAL COMMUNICATIONS COMMISSION  
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Re: Comments of Small Business in Telecommunications

Dear Sir or Madam:

Pursuant to Section 1.419(b) of the Commission's rules, please find enclosed original and four copies of the Comment filed by Small Business in Telecommunications. Also enclosed are five additional copies for each individual Commissioner as permitted under Section 1.419(b).

If you have any questions regarding the foregoing, please do not hesitate to call the undersigned.

Very truly yours,

Michael L. Higgs

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Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Automatic and Manual Roaming Obligations  
Pertaining To  
Commercial Mobile Radio Service

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WT Docket No. 00-193

To: The Commission

**COMMENTS OF SMALL BUSINESS IN TELECOMMUNICATIONS**

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Dated: November 8, 2000

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To: The Commission

**COMMENTS OF SMALL BUSINESS IN TELECOMMUNICATIONS**

**I. INTRODUCTION AND SUMMARY**

Small Business in Telecommunications (SBT), hereby respectfully submits the following comments in response to the *Notice of Proposed Rulemaking (NPRM)* released on November 1, 2000, in the above captioned proceeding. SBT is a non-profit association of entities involved in the telecommunications marketplace, including CMRS carriers which might be affected by those rules proposed. Accordingly, SBT is interested in this matter and appreciates this opportunity to provide comment to the *NPRM*.

SBT believes the *NPRM* omits to reflect the potential effects the proposed rules will have on small telecommunications businesses. SBT submits that the Commission consider the potential harmful effects that manufacturers employing proprietary, incompatible technologies will have on the competitive marketplace, specifically on small businesses' ability to engage in automatic roaming. The roaming agreements between affiliates proposed in paragraph 28 will result in an unequal advantage to carriers and to customers of those carriers, thereby stifling competition. To foster long-term growth, SBT proposes that the Commission offer forbearance to those entities which do not possess the resources necessary to offer roaming services to other carriers

## II. DISCUSSION

### A. The Effect Of Equipment Manufacturers Upon The Market

The missing analysis in the *NPRM* is the effect on the marketplace wrought by manufacturers employing proprietary, incompatible technologies which, if considered, would demonstrate that small businesses would be made to bear the cost of implementing such technology at prescribed pricing levels to reap the advantages of automatic roaming. For example, the dominant producer of digital SMR equipment is Motorola, which company produces iDen equipment for the provision of interconnected, readily handed off traffic. Until recently, Motorola has suggested that a lower cost solution for local carriers might be made available, however, there does not appear, at this time, to be any groundswell to employ the lower cost iDen equipment and there exists no guarantee that even if a small, local carrier would purchase the lower cost iDen equipment, that such modified product would qualify for automatic roaming rights.

The underlying difficulty when there exists only one dominant manufacturer is that the remainder of the market is at the mercy of the manufacturer, particularly when the manufacturer has not entered into licensing arrangements with other manufacturers to create a competitive marketplace. A review of the digital SMR marketplace would show that such conditions exist. In fact, were the Commission to review the Form 10-K submitted by Nextel Communications, Inc. to the Securities and Exchange Commission, the Commission would discover a severe disincentive for Nextel to change manufacturers, technology or infrastructure in a manner which excludes Motorola. Therefore, not only has Motorola a lock on the digital SMR marketplace for all purposes related to roaming between local carriers and Nextel, Motorola also possesses substantial leverage of Nextel to assure the perpetuation of that market control.

Motorola's monopolistic tactics in this area are well known and have precluded small and regional carriers from entrance into the digital SMR market. With the Motorola-Nextel stranglehold on the market, roaming is extremely problematic, if not nearly impossible. Certainly, there exists no opportunity for small or regional carriers to participate in automatic, much less manual, roaming agreements.

Were the Commission to explore further the reason that no competing digital trunking protocol has substantially entered the market, e.g. TETRA or MPT1327, the Commission would discover that Motorola has taken steps to discourage these technologies from being imported from Europe to the United States via Motorola's past participation in those protocols. Again, a manufacturer holds the key regarding competition, technology and ultimately the reasonableness of an automatic roaming rule.

Absent relief provided by the Commission, manufacturers will continue to create proprietary technology which is intended, in part, to assure that restriction on competition which the agency's proposed rules are intended to alleviate. Accordingly, SBT respectfully requests that the Commission also consider the problem created by manufacturers' employment of proprietary technology that reduces the ability of small business to participate in the benefits of any automatic roaming decision.

**B. Agreements Among Affiliates**

The Commission inquired at para. 28 of the *NPRM* as to whether roaming agreements should be neutral or whether affiliates might obtain some advantage arising out of such affiliation. The intent of the roaming rules is to focus competition on facilities-based criteria, not on the existence

of sweetheart deals among affiliates. Allowing carriers to cut a better deal with an affiliated entity flies in the face of the Commission's intent and creates a barrier to market entrance for unaffiliated local and regional carriers. The need, therefore, to assure equal advantage to carriers and to customers of those carriers, which customers benefit by actual and not ersatz competition, necessitates the Commission enforcing a ban on beneficial roaming agreements among affiliates.

Nor does SBT believe that geographic considerations are relevant to whether roaming agreements should discriminate among contracting carriers, *NPRM* at para. 28, except to the extent that both parties might share an advantage in transiting data via long-haul, short-haul or satellite service. But the operative element is sharing, which would result in a reduction of costs between the roaming partners, which cost might be reflected in consumer pricing.

SBT does support the Commission's promotion of the rights of resellers in assuring that resellers are made aware of and are able to market any and all services which arise out of the carrier's agreement to provide roaming services, or to accept roaming services. Competition is not well served by carriers reserving to themselves the right to sell service over a larger geographic area, while concurrently depriving resellers of that same opportunity. The marketplace already evidences a variety of advantages reserved by carriers to the competitive detriment of the carriers' resellers, including noncompetition language, termination at will, required exposure of customer names and leads, etc. The agency has created for itself this opportunity to assure a more equal playing field as among carriers and resellers and SBT supports the Commission's efforts in protecting resellers from carriers' further leveraging of their economic position in the marketplace.

**C. Forbearance For Small Business**

The provision of roaming services requires a substantial investment in assuring that all administrative tasks, accounting functions, automatic hand-off capability, and switching, etc. are performed to provide adequate roaming on a cooperative system. The financing of these costs may easily be beyond the capacity of a small or regional carrier. Therefore, for reasons related solely to resources, a small carrier may not be able to provide roaming service regardless of whether the system operated by the small carrier appears to require that roaming be made available.

SBT proposes that the Commission offer forbearance to those entities which do not possess the resources necessary to offer roaming services to other carriers. SBT does not believe that any submission is required for implementation of the forbearance. Rather, SBT proposes that in the event that a carrier submits a complaint to the Commission that a small or regional carrier has not provided roaming services, either automatic or manual, the Commission allow the defending, small carrier to demonstrate that it does not possess the necessary resources or administrative capability to provide such services. Upon demonstration that such services are not within the economically reasonable limits of the small carrier's resources, the Commission would designate that the complaint be dismissed for reasons of forbearance.

SBT strongly doubts that many such complaints would be filed in the first instance. However, SBT believes that it is appropriate to allow economic resources to be a dispositive defense to any such claims. SBT does not suggest that this defense be made available to larger carriers which have simply failed to invest resources in making available roaming service to other carriers. The failure to invest and the inability to invest are quite different. SBT seeks the Commission's understanding that small carriers will first invest in constructing a viable system for serving the



public within a limited geographic area and then, and only then, commence any investment in providing a larger service area via roaming agreements. This natural, organic approach of small business reflects the reality of the marketplace and the priorities of small and regional carriers. SBT respectfully requests that the Commission recognize this natural growth and forestall any expectation that small carriers be made to provide roaming to the detriment of investment in completing construction of their own systems.

**D. Regulatory Flexibility**

Insofar as SBT has commented above, SBT reiterates those comments as they apply to the Commission's Regulatory Flexibility Analysis and adds the following:

Roaming and the ability to roam suggests interoperability among carriers and customer equipment. The agency's attempt to mandate roaming rules requires a further examination as to whether the state of that portion of the industry which manufactures CMRS equipment is conducive to the proposed roaming rules or whether the status of equipment manufacturing will result in harmful effects for small business.

If, as is increasingly prevalent in the market, the goal of interoperability becomes a path to an artificial imposition upon carriers to purchase a single manufacturer's goods or intellectual property either directly or, in some cases, via licensed producers, then the good intentions suggested by the Commission's roaming rules are undermined. Although the Commission might be creating lower roaming pricing via greater roaming competition, *i.e.* service costs, the Commission is simultaneously inviting higher equipment costs due to a manufacturer's dominant position which is encouraged via forced roaming agreements. Accordingly, SBT urges the Commission to study and

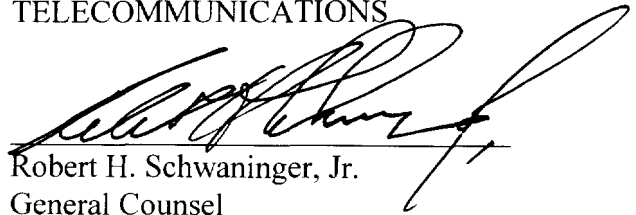
act on both sides of the equation at the same time.

As the Commission has pointed out, 4.5 customers receive digital SMR services from Nextel and each of those customers purchased a Motorola subscriber unit. No other competing manufacturer's product is offered, available, or contemplated. The Commission may also look at the proprietary nature of Qualcomm's technology in the production of cellular and PCS equipment. Is the goal of standardization and interoperability speeding the process of technology consolidation and higher prices for consumers and small business? SBT believes that just such activity is occurring in the marketplace. SBT invites the Commission to look into the comparative pricing between a typical cellular phone (often free with service initiation) and a Motorola iDen unit cost to consumers, as an example of the results of over consolidation.

Accordingly, in response to the Commission's request for comments as to the adverse effect of adoption of automatic roaming rules, the most obvious effect would be the result of the agency's failure to examine the equipment marketplace to prevent abuses of market power by manufacturers. Creating a greater competitive environment from which consumers might benefit will only be accomplished when and if the agency focuses on these problems and endeavors to encourage technology licensing and sharing among competing vendors.

Respectfully submitted,

SMALL BUSINESS IN  
TELECOMMUNICATIONS



Robert H. Schwaninger, Jr.  
General Counsel

Dated: November 8, 2000

Certificate of Service

I, Lynne M. Kasko, certify that I have this 8th day of November, 2000, caused to be hand delivered a copy of the foregoing Comment to the following:

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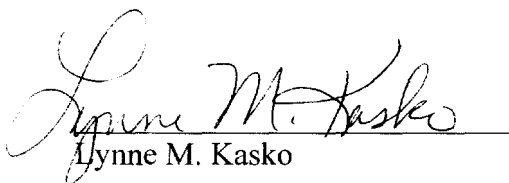
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